

disease, is a danger to himself or herself or to others, or lacks the mental capacity to conduct or manage his or her own affairs.

(2) This includes a finding of insanity by a court in a criminal case and a finding of incompetence to stand trial; or a finding of not guilty by reason of lack of mental responsibility, by any court, or pursuant to articles 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b).

(c) An applicant is committed to a mental health facility if he or she is formally committed to a mental health facility by a court, board, commission, or other lawful authority, including involuntary commitment and commitment for lacking mental capacity, mental illness, and drug use. This does not include commitment to a mental health facility for observation or voluntary admission to a mental health facility.

§§ 1572.111–1572.139 [Reserved]

**Subpart C—Transportation of Hazardous Materials From Canada or Mexico To and Within the United States by Land Modes**

**§ 1572.201 Transportation of hazardous materials via commercial motor vehicle from Canada or Mexico to and within the United States.**

(a) *Applicability.* This section applies to commercial motor vehicle drivers licensed by Canada and Mexico.

(b) *Terms used in this section.* The terms used in 49 CFR parts 1500, 1570, and 1572 also apply in this subpart. In addition, the following terms are used in this subpart for purposes of this section:

*FAST* means Free and Secure Trade program of the Bureau of Customs and Border Protection (CBP), a cooperative effort between CBP and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the border.

*Hazardous materials* means material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of material

that listed as a select agent or toxin in 42 CFR part 73.

(c) *Background check required.* A commercial motor vehicle driver who is licensed by Canada or Mexico may not transport hazardous materials into or within the United States unless the driver has undergone a background check similar to the one required of U.S.-licensed operators with a hazardous materials endorsement (HME) on a commercial driver's license, as prescribed in 49 CFR 1572.5.

(d) *FAST card.* A commercial motor vehicle driver who holds a current Free and Secure Trade (FAST) program card satisfies the requirements of this section. Commercial motor vehicle drivers who wish to apply for a FAST program card must contact the FAST Commercial Driver Program, Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

(e) *TWIC.* A commercial motor vehicle driver who holds a TWIC satisfies the requirements of this section. Commercial vehicle drivers who wish to apply for a TWIC must comply with the rules in 49 CFR part 1572.

**§ 1572.203 Transportation of explosives from Canada to the United States via railroad carrier.**

(a) *Applicability.* This section applies to railroad carriers that carry explosives from Canada to the United States, using a train crew member who is not a U.S. citizen or lawful permanent resident alien of the United States.

(b) *Terms under this section.* For purposes of this section:

*Customs and Border Protection (CBP)* means the Bureau of Customs and Border Protection, an agency within the U.S. Department of Homeland Security.

*Explosive* means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

*Known railroad carrier* means a person that has been determined by the Governments of Canada and the United

States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known offeror* means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business, operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known train crew member* means an individual used to transport explosives from Canada to the United States, who has been determined by the Governments of Canada and the United States to present no known security concern.

*Lawful permanent resident alien* means an alien lawfully admitted for permanent residence, as defined by 8 U.S.C. 1101(a)(20).

*Offeror* means the person offering a shipment to the railroad carrier for transportation from Canada to the United States, and may also be known as the "consignor" in Canada.

*Railroad carrier* means "railroad carrier" as defined in 49 U.S.C. 20102.

(c) *Prior approval of railroad carrier, offeror, and train crew member.* (1) No railroad carrier may transport in commerce any explosive into the United States from Canada, via a train operated by a crew member who is not a U.S. national or lawful permanent resident alien, unless the railroad carrier, offeror, and train crew member are identified on a TSA list as a known railroad carrier, known offeror, and known train crew member, respectively.

(2) The railroad carrier must ensure that it, its offeror, and each of its crew members have been determined to be a known railroad carrier, known offeror, and known train crew member, respectively. If any has not been so determined, the railroad carrier must submit the following information to Transport Canada:

(i) The railroad carrier's identification, including—

- (A) Official name;
- (B) Business number;
- (C) Any trade names; and
- (D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

(A) Official name.

(B) Business number.

(C) Address.

(iii) The following information about any train crew member the railroad carrier may use to transport explosives into the United States from Canada, who is neither a U.S. national nor lawful permanent resident alien:

(A) Full name.

(B) Both current and most recent prior residential addresses.

(3) Transport Canada will determine whether the railroad carrier and offeror are legitimately doing business in Canada and will also determine whether the train crew members present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known railroad carriers, offerors, and train crew members and their identifying information.

(4) TSA will update and maintain the list of known railroad carriers, offerors, and train crew members and forward the list to CBP.

(5) Once included on the list, the railroad carriers, offerors, and train crew members need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the railroad carriers, offerors, and train crew members to confirm their continued eligibility, and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border.* (1) Train crew members who are not U.S. nationals or lawful permanent resident aliens. Upon arrival at a point designated by CBP for inspection of trains crossing into the United States, the train crew members of a train transporting explosives must provide sufficient identification to CBP to enable that agency to determine if each crew member is on the list of known train crew members maintained by TSA.

(2) *Train crew members who are U.S. nationals or lawful permanent resident aliens.* If CBP cannot verify that the crew member is on the list and the crew member is a U.S. national or lawful permanent resident alien, the crew member may be cleared by CBP upon providing—

## § 1572.400

- (i) A valid U.S. passport; or
- (ii) One or more other document(s), including a form of U.S. Federal or state Government-issued identification with photograph, acceptable to CBP.
- (3) *Compliance.* If a carrier attempts to enter the U.S. without having complied with this section, CBP will deny entry of the explosives and may take other appropriate action.

### Subpart D [Reserved]

### Subpart E—Fees for Security Threat Assessments for Hazmat Drivers

#### § 1572.400 Scope and definitions.

- (a) *Scope.* This part applies to—
  - (1) States that issue an HME for a commercial driver's license;
  - (2) Individuals who apply to obtain or renew an HME for a commercial driver's license and must undergo a security threat assessment under 49 CFR part 1572; and
  - (3) Entities who collect fees from such individuals on behalf of TSA.

(b) *Terms.* As used in this part:  
*Commercial driver's license (CDL)* is used as defined in 49 CFR 383.5.

*Day* means calendar day.

*FBI Fee* means the fee required for the cost of the Federal Bureau of Investigation (FBI) to process fingerprint records.

*Information Collection Fee* means the fee required, in this part, for the cost of collecting and transmitting fingerprints and other applicant information under 49 CFR part 1572.

*Threat Assessment Fee* means the fee required, in this part, for the cost of TSA adjudicating security threat assessments, appeals, and waivers under 49 CFR part 1572.

*TSA agent* means an entity approved by TSA to collect and transmit fingerprints and applicant information, in accordance with 49 CFR part 1572, and fees in accordance with this part.

#### § 1572.401 Fee collection options.

- (a) *State collection and transmission.* If a State collects fingerprints and applicant information under 49 CFR part 1572, the State must collect and transmit to TSA the Threat Assessment Fee, in accordance with the requirements of 49 CFR 1572.403. The State

## 49 CFR Ch. XII (10–1–07 Edition)

also must collect and remit the FBI fee, in accordance with established procedures.

(b) *TSA agent collection and transmission.* If a TSA agent collects fingerprints and applicant information under 49 CFR part 1572, the agent must—

(1) Collect the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in accordance with procedures approved by TSA;

(2) Transmit to TSA the Threat Assessment Fee, in accordance with procedures approved by TSA; and

(3) Transmit to TSA the FBI Fee, in accordance with procedures approved by TSA and the FBI.

[72 FR 3595, Jan. 25, 2007; 72 FR 14050, Mar. 26, 2007]

#### § 1572.403 Procedures for collection by States.

This section describes the procedures that a State, which collects fingerprints and applicant information under 49 CFR part 1572; and the procedures an individual who applies to obtain or renew an HME, for a CDL in that State, must follow for collection and transmission of the Threat Assessment Fee and the FBI Fee.

(a) *Imposition of fees.* (1) The following Threat Assessment Fee is required for TSA to conduct a security threat assessment, under 49 CFR part 1572, for an individual who applies to obtain or renew an HME: \$34.

(2) The following FBI Fee is required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572: the fee collected by the FBI under Pub. L. 101–515.

(3) An individual who applies to obtain or renew an HME, or the individual's employer, must remit to the State the Threat Assessment Fee and the FBI Fee, in a form and manner approved by TSA and the State, when the individual submits the application for the HME to the State.

(b) *Collection of fees.* (1) A State must collect the Threat Assessment Fee and FBI Fee, when an individual submits an application to the State to obtain or renew an HME.

(2) Once TSA receives an application from a State for a security threat assessment under 49 CFR part 1572, the